APPENDIX

Supreme Court, U. S.
FILED
JUN 1 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-699

F. DAVID MATHEWS, SECRETARY OF HEALTH, EDUCATION, AND WELFARE,

Appellant,

—*v.*—

LEON GOLDFARB

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

DOCKETED NOVEMBER 12, 1975
PROBABLE JURISDICTION NOTED FEBRUARY 23, 1976

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No. 75-699

F. David Mathews, Secretary of Health, Education, and Welfare,

Appellant,

—*v.*—

Leon Goldfarb

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NEW YORK

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RELEVANT DOCKET ENTRIES

DATE	FILINGS—PROCEEDINGS
8-15-74	Complaint filed.
8-19-74	Summons issued.
8-19-74	Memorandum of law in suport of application for three-judge court filed.
8-23-74	Summons returned and filed/executed.
10-16-74	Amended Complaint filed.
10-16-74	Notice of Motion For Determination of Class Action with Memorandum of Law annexed on 11-1-74 filed.
10-30-74	ANSWER of deft filed.
11-1-74	Before TRAVIA, J.—Case called—Case reassigned to J. Weinstein.
11-4-74	Letter from Nadine Taub dtd 10-31-74 filed.
11-4-74	By WEINSTEIN, J.—Order dtd 11-4-74 setting 11-22-74 at 9:30 AM for hearing on three-judge court determination filed on document #7.
11-19-74	Letter dated Nov. 14, 1974 filed from N Taub to J Weinstein.
11-21-74	Deft's Memorandum of Law in Opposition to pltff's motion for determination that action be maintained as class action filed.
11-22-74	Before WEINSTEIN, J.—Case called. Upon lack of opposition the motion for a three judge court is granted. Submit order. Application for class action is denied, with leave to renew before the three judge court. Submit order.
12-2-74	By WEINSTEIN, J.—Order dated 11/26/74 filed that the application for a 3 Judge Court should be granted.

DATE	FILINGS—PROCEEDINGS

2-4-75 Copy of letter dtd 2-4-75 to Ch J. Kaufman from Dist. J. Weinstein filed.

2-4-75 Carbon copy of letter dtd 11-27-74 to Ch. J. Kaufman from Dist. J. Weinstein filed.

2-5-75 Carbon copy of letter dtd 2-4-75 to Ch. J. Kaufman from J. Weinstein filed.

2-26-75 Letter dated 2/24/75 filed from N. Taub to J. Weinstein.

2-28-75 Copy of letter dated 2/27/75 filed from J. Weinstein to J. Kaufman.

4-25-75 Notice of Motion, ret. when Judge sets date filed re: for class action.

4-25-75 Pltff's Memorandum in Support of Request for confirmation of class action status filed.

4-25-75 Notice of Motion, ret. when Judge sets date filed re: for summary judgment in favor of the pltffs.

4-25-75 Pltff's Memorandum of Law in Support of Motion for Summary Judgment filed.

5-10-75 Letter dtd 5-7-75 to J. Weinstein from Pamela McGuire filed.

5-10-75 By WEINSTEIN, J.—Order dtd 5-9-75 re 6-16-75 as return date for pltff's motion re class action etc. See document #19.

5-28-75 Designation of Judges dtd 5-23-75 (by CH. J. KAUFMAN, USCA) designating Judges Leonard P. Moore and Judge Orrin C. Judd in addition to J. Weinstein pursuant to 28 USC 2282 etc filed.

5-28-75 By WEINSTEIN, J.—Order dtd 5-27-75 directing Clerk to send a copy of the entire file to Judges Moore and Judd. See bottom of document #20.

DATE	FILINGS—PROCEEDINGS

5-28-75 By WEINSTEIN, J—Order dtd 5-27-75 re argument on motions pending will be heard on 6-16-75, and directing Clerk to send copies of this order to designated Judges and counsel filed.

6-5-75 Letter dtd 6-4-75 to J. Weinstein from Pamela C. McGuire filed.

6-9-75 Notice of motion & memorandum of law to dismiss complaint, ret 6-16-75 at 9:30 A.M. filed. (copies mailed to Moore & Judd).

6-12-75 Pltff's reply memorandum filed.

6-16-75 Before WEINSTEIN, JUDD, MOORE J.—Case called—Pltff's motion for summary judgment argued—Decision reserved.

6-19-75 By WEINSTEIN, J.—JUDD, J.—MOORE, C.J.—Memorandum and Order filed that pltff's request for declaratory judgment is granted—Application for certification as a class denied, etc.

7-15-75 Notice of appeal filed. Duplicate of appeal mailed to attys for pltff. Duplicate of appeal & duplicate of docket entries mailed to U.S. Supreme Court.

8-28-75 Copy of letter dtd 8-26-75 to ASUA Stewart from Nadine Taub filed.

10-17-75 Letter from Nadine Taub dtd 10-10-75 re present status filed.

10-31-75 Copy of letter dated 10-27-75 filed from N. Taub to Mr. McMorrow.

1-16-76 Copy of letter from pltff's atty dtd 1-14-76 filed.

2-2-76 Motion of deft ret 2-12-76 for an order granting deft stay of order file 6-19-75 filed.

2-9-76 Affadavit in opposition to defts. application for a stay filed.

DATE	FILINGS—PROCEEDINGS
2-11-76	Notice of Motion, ret. 2/19/76 at 10:30 A.M. filed re: to stay judgment of this court, etc.
2-23-76	By WEINSTEIN, J.—Order denying motion for a stay filed on doc. #32.
3-1-76	Certified copy of order from Supreme Court noting probable jurisdiction filed.
3-18-75	By MOORE, J., JUDD, J., WEINSTEIN, J.—Order dtd. 3-5-76 denying govt's motion for a stay etc., filed.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Civil Action No. 74C 1188

Class Action

THREE-JUDGE COURT REQUESTED

LEON GOLDFARB, individually and on behalf of all other persons similarly situated, PLAINTIFFS

v.

SECRETARY OF HEALTH, EDUCATION AND WELFARE, DEFENDANTS

COMPLAINT

I. PRELIMINARY STATEMENT

Plaintiff, individually and on behalf of all persons similarly situated, seeks to have this court declare unconstitutional on its face and as applied two provisions of the Social Security Act. These are 42 U.S.C. § 402(c)(1)(C), a provision of the Social Security Act restricting "Husband's insurance benefits" to men who were receiving at least one-half of their support from their wives at the time their wives' entitlement to old-age or disability benefits accrued, and 42 U.S.C. § 402(f)(1)(D), a provision of the Act restricting "Widower's insurance benefits" to widowers who were receiving at least half of their support from their wives at the time of their wives' retirement, death or period of disability which did not end prior to the month in which the wife's death occurred. The provisions are challenged on the ground that the extra requirement applicable to husbands but not to wives under 42 U.S.C. § 402(b)

and applicable to widowers but not to widows under 42 U.S.C. § 402(e) denies men and women the equal protection of the laws safeguarded by the due process clause of the Fifth Amendment to the United States Constitution. Exclusion of certain males from these Social Security benefits entails a dual discrimination. The Social Security contributions of the female wage earner are worth less than the contributions of a similarly situated male wage earner in terms of the protection afforded the family, and the husband and widower are denied assistance granted to an identically situated wife or widow.

Plaintiff, who qualified for benefits under 42 U.S.C. § 402(b) in all respects except that he was a husband, not a wife, and who qualified for benefits under 42 U.S.C. § 402(c) in all respects except that he is a widower, not a widow, and who qualifies for benefits under 42 U.S.C. § 402(f) in all respects except that he was not receiving at least one-half his support from his wife, seeks an injunction against the continued application of 42 U.S.C. § 402(c)(1)(C) and (f)(1)(D) to deny him husband's and widower's insurance benefits and damages for benefits due to him.

II. JURISDICTION

1. This action for a declaration of rights, injunctive relief and damages arises under the Fifth Amendment to the Constitution of the United States. Jurisdiction is conferred upon this court by 28 U.S.C. § 1331. The matter in controversy, exclusive of interest and costs, exceeds the sum of $10,000. Adjudication by a three-judge court is sought pursuant to 28 U.S.C. §§ 2282 and 2284. Declaratory relief is sought pursuant to 28 U.S.C. §§ 2201 and 2202.

III. PARTIES

A. Plaintiff

2. Leon Goldfarb, the named plaintiff, is a citizen of the United States and of the State of New York and

resides at 76-21 250th Street, Bellerose, Long Island, New York 11426.

B. Class Action

3. Plaintiff brings this action on his own behalf and pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure on behalf of all other persons similarly situated. The members of the class similarly situated are all husbands and widowers entitled to Social Security benefits under 42 U.S.C. § 402(c) and (f) respectively except for the fact that they were not receiving at least half of their support from their wives, and who are denied benefits for that reason. The requirements of Rule 23 are met in that the class is so numerous that joinder of all members is impracticable; there are questions of law and fact common to the class affecting the right of all members to due process and equal protection of the laws as guaranteed by the Fifth Amendment to the United States Constitution; the claims of the named plaintiff are typical of the claims of the class; the named plaintiff will fairly and adequately protect the interests of the class; and the party opposing the class acts or refuses to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

C. Defendant

4. Defendant Secretary of the United States Department of Health, Education and Welfare is responsible for implementation, administration and enforcement of the Social Security Act. Defendant is sued in his official capacity, and as representative of all other administrators, officers and agents charged with implementing, administering and enforcing the Social Security Act in a manner that denies to husbands and widowers the benefits accorded to similarly situated wives and widows.

IV. STATEMENT OF THE CLAIM

5. Plaintiff Leon Goldfarb was born on December 9, 1904. Plaintiff's deceased wife, Hannah Goldfarb, was

born on March 21, 1908. They were married on July 16, 1931. Hannah Goldfarb died on August 22, 1968. Plaintiff has not since remarried.

6. Hannah Goldfarb was employed as a secretary for the New York City Public School System for approximately twenty-five years and was a fully insured individual under the Social Security Act at the time her disability status became effective. She applied for disability benefits as of April 12, 1968 and received disability payments from April through December 1968 (a copy of the letter showing the award of such benefits is appended hereto as Exhibit A).

7. Plaintiff held various positions with the federal government for approximately thirty-seven years, and his last position prior to his retirement in July 1971 at the age of sixty-seven was as managing analyst for the United States Army Signal Corps. While employed by the federal government, plaintiff was not covered by the Social Security Act, and he did not accumulate enough quarters in covered employment to be insured under the Act. Consequently, he has never received old-age or disability insurance benefits under the Social Security Act.

8. In September 1968, plaintiff visited the Social Security Administration District Office located at 165-15 88th Avenue, Jamaica, New York 11432 to file his wife's death certificate and to inquire as to his eligibility for benefits based on his wife's earnings. At that time he was advised that he was ineligible because his wife had not provided one-half of his support.

9. Plaintiff subsequently returned to the Jamaica Office each time the Social Security Act was amended to inquire if he qualified for benefits as a result of the new amendment. In all, plaintiff made approximately six separate inquiries at the office.

10. On his last visit to the Jamaica Office on or about January 17, 1974, plaintiff spoke to a Mr. Lewondowski, drawing his attention to the recent New Jersey District Court decision in *Wiesenfeld* v. *Secretary of Health, Education and Welfare*, 367 F. Supp. 981 (D.C.N.J. 1973). He indicated that plaintiff might be eligible for widow-

er's insurance benefits and gave plaintiff Widow's Pension Application for Widower's Insurance Benefits to complete. On or about January 18, 1974, plaintiff submitted the birth and death certificates necessary to complete his application.

11. Plaintiff subsequently received a letter (appended hereto as Exhibit B) stating that he did not qualify for widower's benefits because he was not receiving at least one-half of his support from his wife at the time of her death.

12. Plaintiff never applied for husband's insurance benefits because such application would have been futile in that he was ineligible under the terms of 42 U.S.C. § 402(c) and 42 U.S.C. § 402(b).

13. Plaintiff was denied husband's insurance benefits and was and continues to be denied widower's insurance benefits solely on the ground of his sex.

14. The additional requirement of 42 U.S.C. § 402(c)(1)(C) and (f)(1)(D) that husbands and widowers prove that they were receiving at least one-half of their support from their wives denies to plaintiff and all other men similarly situated due process and equal protection of the laws guaranteed by the Fifth Amendment to the United States Constitution.

15. Plaintiff and the members of the class he represents are suffering present irreparable injury which will continue in the future by reason of the discriminatory requirement herein complained of; he and the members of the class he represents are and will remain in constant subjection to a constitutionally prohibited denial of due process and equal protection of the laws so long as the additional requirements contained in 42 U.S.C. § 402(c)(1)(C) and 42 U.S.C. § 402(f)(1)(D) are applied to husbands and widowers solely on the ground of their sex. Further pursuit of relief would be futile in view of the discrimination inherent in the statute on its face and in the explicit application of 42 U.S.C. § 402(c)(1)(C) and 42 U.S.C. § 402(f)(1)(D) to males. Plaintiff is without adequate remedy at law to redress the unlawful discrimination herein complained of other than this action for a declaration of rights, an injunction and damages.

V. PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays, on behalf of himself and all other persons similarly situated, that this court:

(1) convene a three-judge court pursuant to 28 U.S.C. §§ 2282 and 2284 to determine this controversy;

(2) certify that this action is maintainable as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

(3) declare that 42 U.S.C. § 402(c)(1)(C) and 42 U.S.C. § 402(f)(1)(D) are unconstitutional;

(4) issue a preliminary and final injunction restraining defendant and his agents from denying benefits to plaintiff and his class on the ground of failure to satisfy 42 U.S.C. § 402(c)(1)(C) and (f)(1)(D) and requiring application of 42 U.S.C. § 402(b), (c), (e) and (f) in a non-discriminatory manner to both sexes;

(5) order payment to plaintiff Leon Goldfarb of the benefits due to him commencing April 1968 and for each month thereafter;

(6) assess reasonable costs and attorneys fees; and

(7) grant such other and future relief as this court deems just and proper.

Respectfully submitted,

/s/ Nadine Taub
NADINE TAUB
175 University Avenue
Newark, New Jersey 07102
(201) 648-5637

KATHLEEN PERATIS
American Civil Liberties Union Foundation
22 East 40th Street
New York, New York 10016

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

Civil Action No. 74C-1188

Class Action

THREE-JUDGE COURT REQUESTED

[Filed October 16, 1974]

[Title Omitted in Printing]

AMENDED COMPLAINT

I. PRELIMINARY STATEMENT

Plaintiff, individually and on behalf of all persons similarly situated, seeks to have this court declare unconstitutional on its face and as applied two provisions of the Social Security Act. These are 42 U.S.C. § 402(c)(1)(C), a provision of the Social Security Act restricting "Husband's insurance benefits" to men who were receiving at least one-half of their support from their wives at the time their wives' entitlement to old-age or disability benefits accrued, and 42 U.S.C. § 402(f)(1)(D), a provision of the Act restricting "Widower's insurance benefits" to widowers who were receiving at least half of their support from their wives at the time of their wives' retirement, death or period of disability which did not end prior to the month in which the wife's death occurred. The provisions are challenged on the ground that the extra requirement applicable to husbands but not to wives under 42 U.S.C. § 402(b) and applicable to widowers but not to widows under 42 U.S.C. § 402(e) denies men and women the equal protection of the laws safeguarded by the due process clause of the Fifth Amendment to the United States Constitution. Exclusion of certain males from these Social Security benefits entails a dual discrimination. The Social Security contributions of the female wage earner are worth less than the contributions of a similarly situated male wage earner in terms of the protection afforded the family, and

the husband and widower are denied assistance granted to an identically situated wife or widow.

Plaintiff, who qualified for benefits under 42 U.S.C. § 402(b) in all respects except that he was a husband, not a wife, and who qualified for benefits under 42 U.S.C. § 402(c) in all respects except that he is a widower, not a widow, and who qualifies for benefits under 42 U.S.C. § 402(f) in all respects except that he was not receiving at least one-half his support from his wife, seeks an injunction against the continued application of 42 U.S.C. § 402(c)(1)(C) and (f)(1)(D) to deny him husband's and widower's insurance benefits and damages for benefits due to him.

II. JURISDICTION

1. This action for a declaration of rights, injunctive relief and damages arises under the Fifth Amendment to the Constitution of the United States. Jurisdiction is conferred upon this court by 28 U.S.C. § 1331. The matter in controversy, exclusive of interest and costs, exceeds the sum of $10,000. Adjudication by a three-judge court is sought pursuant to 28 U.S.C. §§ 2282 and 2284. Declaratory relief is sought pursuant to 28 U.S.C. §§ 2201 and 2202.

III. CLASS ACTION ALLEGATIONS

2. Plaintiff brings this action on his own behalf and pursuant to Rule 23 (b)(2) of the Federal Rules of Civil Procedure on behalf of all other persons similarly situated. The members of the class similarly situated are all husbands and widowers entitled to Social Security benefits under 42 U.S.C. § 402 (c) and (f) respectively except for the fact that they were not receiving at least one-half of their support from their wives, and who are denied benefits for that reason.

3. The requirements of Rule 23 (a) are met in that:

(a) The class is so numerous that joinder of all members is impracticable. On information and belief the class consists of approximately 250,000 husbands and 150,000 widowers.

(b) There is a common question of law, i.e. whether the discrimination inherent in the challenged statutory scheme, which provides benefits to wives and widows regardless of their dependency, but to husbands and widowers only if they assert and prove their dependency, constitutes invidious discrimination in violation of the due process clause of the Fifth Amendment of the United States Constitution.

(c) The claims of the named plaintiff are typical of the claims of the class. The named plaintiff's interest in the litigation differs from that of the other class members only in the amount of the payments involved.

(d) The named plaintiff will fairly and adequately protect the interests of the class. The named plaintiff intends to vigorously pursue the objective of eliminating the discrimination embodied in 42 U.S.C. § 402 (c) and (f) for the benefit of the class. Plaintiff's interest in coextensive with the interest of the other members of the class and is in no particular adverse to the interest of the class as a whole. Further, the named plaintiff is represented by experienced counsel who will adequately advance his interests as well as those of the class.

4. The requirements of Rule 23 (c)(2) are met in that the party opposing the class acts or refuses to act on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

IV. PARTIES

A. Plaintiff

5. Leon Goldfarb, the named plaintiff, is a citizen of the United States and of the State of New York and resides at 76-21 250th Street, Bellerose, Long Island, New York 11426.

B. Defendant

6. Defendant Secretary of the United States Department of Health, Education and Welfare is responsible for implementation administration and enforcement of the Social Security Act. Defendant is sued in his official capacity, and as representative of all other administrators, officers and agents charged with implementing, administering and enforcing the Social Security Act in a manner that denies to husbands and widowers the benefits accorded to similarly situated wives and widows.

V. STATEMENT OF THE CLAIM

7. Plaintiff Leon Goldfarb was born on December 9, 1904. Plaintiff's deceased wife, Hannah Goldfarb, was born on March 21, 1908. They were married on July 16, 1931. Hannah Goldfarb died on August 22, 1968. Plaintiff has not since remarried.

8. Hannah Goldfarb was employed as a secretary for the New York City Public School System for approximately twenty-five years and was a fully insured individual under the Social Security Act at the time her disability status became effective. She applied for disability benefits as of April 12, 1968 and received disability payments from April through December 1968 (a copy of the letter showing the award of such benefits is appeneded thereto as Exhibit A).

9. Plaintiff held various positions with the federal government for approximately thirty-seven years, and his last position prior to his retirement in July 1971 at the age of sixty-seven was as managing analyst for the United States Army Signal Corps. While employed by the federal government, plaintiff was not covered by the Social Security Act, and he did not accumulate enough quarters in covered employment to be insured under the Act. Consequently, he has never received old-age or disability insurance benefits under the Social Security Act.

10. In September 1968, plaintiff visited the Social Security Administration District Office located at 165-15 88th Avenue, Jamaica, New York 11432 to file his wife's death certificate and to inquire as to his eligibility for benefits based on his wife's earnings. At that time he

was advised that he was ineligible because his wife had not provided one-half of his support.

11. Plaintiff subsequently returned to the Jamaica Office each time the Social Security Act was amended to inquire if he qualified for benefits as a result of the new amendment. In all, plaintiff made approximately six separate inquiries at the office.

12. On his last visit to the Jamaica Office on or about January 17, 1974, plaintiff spoke to a Mr. Lewondowski, drawing his attention to the recent New Jersey District Court decision in *Weisenfeld* v. *Secretary of Health, Education and Welfare*, 367 F. Supp. 981 (D.C.N.J. 1973). He indicated that plaintiff might be eligible for widower's insurance benefits and gave plaintiff Widow's Pension Application for Widower's Insurance Benefits to complete. On or about January 18, 1974, plaintiff submitted the birth and death certificates necessary to complete his application.

13. Plaintiff subsequently received a letter (appended hereto as Exhibit B) stating that he did not qualify for widower's benefits because he was not receiving at least one-half of his support from his wife at the time of her death.

14. Plaintiff never applied for husband's insurance benefits because such application would have been futile in that he was ineligible under the terms of 42 U.S.C. § 402(c) and 42 U.S.C. § 402(b).

15. Plaintiff was denied husband's insurance benefits and was and continues to be denied widower's insurance benefits solely on the ground of his sex.

16. The additional requirement of 42 U.S.C. § 402(c)(1)(C) and (f)(1)(D) that husbands and widowers prove that they were receiving at least one-half of their support from their wives denies to plaintiff and all other men similarly situated due process and equal protection of the laws guaranteed by the Fifth Amendment to the United States Constitution.

17. Plaintiff and the members of the class he represents are suffering present irreparable injury which will continue in the future by reason of the discriminatory requirement herein complained of; he and the members

of the class he represents are and will remain in constant subjection to a constitutionally prohibited denial of due process and equal protection of the laws so long as the additional requirements contained in 42 U.S.C. § 402 (c) (1) (C) and 42 U.S.C. § 402 (f) (1) (D) are applied to husbands and widowers solely on the ground of their sex. Further pursuit of relief would be futile in view of the discrimination inherent in the statute on its face and in the explicit application of 42 U.S.C. § 402 (c) (1) (C) and 42 U.S.C. § 402 (f) (1) (D) to males. Plaintiff is without adequate remedy at law to redress the unlawful discrimination herein complained of other than this action for a declaration of rights, an injunction and damages.

VI. PRAYER FOR RELIEF

WHEREFORE, plaintiff respectfully prays, on behalf of himself and all other persons similarly situated, that this court:

(1) convene a three-judge court pursuant to 28 U.S.C. §§ 2282 and 2284 to determine this controversy;

(2) certify that this action is maintainable as a class action pursuant to Rule 23 of the Federal Rules of Civil Procedure;

(3) declare that 42 U.S.C. § 402 (c) (1) (C) and 42 U.S.C. § 402 (f) (1) (D) are unconstitutional;

(4) issue a preliminary and final injunction restraining defendant and his agents from denying benefits to plaintiff and his class on the ground of failure to satisfy 42 U.S.C. § 402 (c) (1) (C) and (f) (1) (D) and requiring application of 42 U.S.C. § 402 (b), (c), (e) and (f) in a non-discriminatory manner to both sexes;

(5) order payment to plaintiff Leon Goldfarb of the benefits due to him commencing April 1968 and for each month thereafter;

(6) assess reasonable costs and attorneys fees; and

(7) grant such other and future relief as this court deems just and proper.

Respectfully submitted,

/s/ Nadine Taub
NADINE TAUB
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American Civil Liberties Union Foundation
22 East 40th Street
New York, New York 10016
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EXHIBIT A

DEPARTMENT OF HEALTH, EDUCATION,
AND WELFARE
SOCIAL SECURITY ADMINISTRATION

Bureau of Retirement and Survivors Insurance

NEW YORK, NEW YORK

When writing about your claim always give Claim No.

Leon Goldfarb
76-21 250 St.
Jamaica, NY 11426

085-18-9866 HS
Hannah Goldfarb

January 17, 1969

A check in the amount of $604.80 for April through December 1968 will be mailed to you by the Treasury Department in a few days. Our records show that payment is due for the reason(s) marked by "X" below:

[X] Payment of amount previously due Hannah Goldfarb, Dec'd.

[ ] Amount due because of increase in rate which became effective

[ ] Check(s) returned by former payee is (are) now payable to you.

[ ] This payment is in addition to your regular monthly benefit check.

[ ] To refund temporary deductions.

[ ] To refund excess premium amounts.

This represents disability benefits due the deceased for the above period.

If you have any questions about your claim, you should get in touch with the most convenient social security office. If you call in person, please take this notice with you.

Sincerely yours,

/s/ Martin Aaron
MARTIN AARON
Director of Operations
Retirement and Survivors Insurance

EXHIBIT B

SOCIAL SECURITY NOTICE OF
DISAPPROVED CLAIM

From: Bureau of Retirement and Survivors Insurance
Northeastern Program Center,
Flushing, New York 11368

Date: April 4, 1974

Leon Goldfarb
76 21 250 St
Jamaica, NY 11426

Your Claim Number:
085-18-9866

This notice refers to your claim for benefits under the Social Security Act, on the earnings record of Hannah Goldfarb.

You do not qualify for a widower's benefit because you do not meet one of the requirements for such entitlement. This requirement is that you must have been receiving at least one half support from your wife when she died.

If you believe that this determination is not correct, you may request that the case be re-examined. If you want this reconsideration, you must request it not later than 6 months from the date of this notice. You may make your request through any social security office. If you have additional evidence, submit it with your request. Please read the enclosed leaflet for a full explanation of your right to question the determination made on your claim.

If you have questions about your claim, you may get in touch with any social security office. Most questions can be handled by telephone or mail. If you visit an office, however, please take this notice with you.

Enclosure:
DHEW (SSA) 73-10058

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

[Filed October 30, 1974]

[Title Omitted in Printing]

Civil Action No. 74 C 1188

ANSWER

FIRST DEFENSE

1. This court lacks subject matter jurisdiction over plaintiff's claim for money.

SECOND DEFENSE

2. The amended complaint fails to state a claim upon which relief can be granted.

THIRD DEFENSE

3. Defendant admits the allegations contained in paragraph 13 of the amended complaint; denies the allegations contained in paragraphs 2, 3, 4, 15, 16, and 17; and is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraphs 10 and 11.

4. Defendant denies the allegations contained in "I Preliminary Statement" of the amended complaint concerning discrimination in the administration of the Social Security benefits program; is without knowledge or information, other than as afforded by the amended complaint, sufficient to form a belief as to the truth of the allegations concerning the relief sought by plaintiff or the bases relied upon by plaintiff for such relief; and, as to the allegations concerning certain provisions of the Social Security Act, refers to the official text of the Act.

5. Defendant denies the allegation contained in paragraph 1 of the amended complaint that this court has jurisdiction of the subject matter of the action insofar as the action seeks an award of money and is without knowledge or information, other than as afforded by the amended complaint, sufficient to form a belief as to the truth of the allegations concerning the relief sought by plaintiff or the bases relied upon by plaintiff for such relief.

6. Defendant admits the allegations contained in paragraph 5 of the amended complaint except that defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation concerning plaintiff's citizenship.

7. Defendant denies the allegations contained in paragraph 6 of the amended complaint except admits that the Secretary of the United States Department of Health, Education and Welfare is responsible for the implementation, administration and enforcement of the Social Security Act and that defendant is sued in his official capacity.

8. Defendant admits the allegations contained in paragraph 7 of the amended complaint except denies that Hannah Goldfarb was born on March 21, 1908 and is without knowledge or information sufficient to form a belief as to the truth of the allegation concerning plaintiff's date of marriage.

9. Defendant admits the allegations contained in paragraph 8 of the amended complaint except that defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning Hannah Goldfarb's application for and receipt of disability benefits.

10. Defendant admits the allegations contained in paragraph 9 of the amended complaint except that defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations concerning length of time plaintiff was employed by the federal government, positions held by plaintiff, and plaintiff's age at the time of his retirement.

11. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 12 of the amended complaint except that defendant admits that plaintiff spoke to a Mr. Lewondowski on January 17, 1974 and that plaintiff submitted a completed application for widower's insurance benefits on that date.

12. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of the amended complaint except that defendant admits that plaintiff was ineligible for husband's insurance benefits under the terms of 42 U.S.C. § 402(c)(1)(C).

WHEREFORE, defendant demands judgment dismissing the complaint, with costs.

Dated: Brooklyn, New York October 29, 1974

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SUPREME COURT OF THE UNITED STATES

No. 75-699

F. DAVID MATHEWS, Secretary of Health, Education and Welfare, APPELLANT

v.

LEON GOLDFARB

APPEAL from the United States District Court for the Eastern District of New York.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted.

February 23, 1976

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